

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 8

In The Matter Of:)	
)	
Eureka Mills Site, Operable Units 00, 01 and 03)	
)	
The Atlantic Richfield Company, Respondent)	
)	
)	U.S. EPA
)	Docket No. CERCLA-08-2003-0007
)	
Proceeding Under Section 106(a) of the)	
Comprehensive Environmental Response,)	
Compensation, and Liability Act of 1980,)	
as amended (42 U.S.C. § 9606(a)))	
)	

ADMINISTRATIVE ORDER FOR REMEDIAL ACTION

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Attachment 1 - Record of Decision

Attachment 2 - Remedial Action Work Plan

Attachment 3 - Schedule of Submittals and Compliance in UAO

I. INTRODUCTION AND JURISDICTION

1. This Administrative Order for Remedial Action (Order) directs The Atlantic Richfield Company (Respondent) to implement the remedial design prepared by the United States Environmental Protection Agency (EPA) for the remedy described in the Lead-Contaminated Soils Record of Decision for the Eureka Mills NPL site, dated September 30, 2002, for Operable Units No. 00, 01 and 03, by performing a remedial action. This Order is issued to Respondent by EPA under the authority vested in the President of the United States by section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9606(a). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580 (52 Fed. Reg. 2926, January 29, 1987), and was further delegated to EPA Regional Administrators on September 13, 1987 by EPA Delegation No. 14-14-B and redelegated to the Assistant Regional Administrator for Ecosystems Protection and Remediation in November 1997. This authority was further delegated to the Director of the Superfund Remedial Response Program, Office of Ecosystems Protection and Remediation, EPA Region 8 on August 30, 2002.

II. FINDINGS OF FACT

2. The Site is located in central Utah, approximately 80 miles southwest of Salt Lake City. The Site encompasses the City of Eureka and adjacent unincorporated areas of Juab County and Utah County, which were the site of mining operations from 1870 until the 1950s. The Site includes hundreds of lead-contaminated residential and non-residential properties as well as numerous mine waste piles. Based on blood lead testing results, roughly 20% of the children in Eureka exhibit or have exhibited elevated blood-lead concentrations.

3. Respondent is a successor corporation of a past owner and operator of the Site, International Smelting and Refining Company (International). International entered into several lease agreements and contracts to mine at the Site. International also owned property within the Site boundaries. During the time of International's ownership and operations at the Site, hazardous substances, including lead, were disposed of at the Site.

4. On September 5, 2002, pursuant to section 105 of CERCLA, 42 U.S.C. 9605, EPA placed the Eureka Mills Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B.

5. To study and undertake response activities in phases, EPA divided the Site into operable units. The operable units for the Site are OU 00 - Sitewide (includes residential areas); OU 01 - East Eureka (Godiva and May Day); OU 02 - West Eureka (Bullion Beck and Gemini); OU 03 - Central Eureka (Chief); and OU 04 - Groundwater, Surface Water and Ecological Risks. This Order addresses operable units 00, 01 and 03.

6. From January 2001 to July 2002, EPA undertook a Remedial Investigation and Feasibility Study ("RI/FS") for operable units 00 through 03 of the Site, pursuant to CERCLA and the National Contingency Plan, 40 C.F.R. Part 300.

7. Pursuant to section 117 of CERCLA, 42 U.S.C. 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on July 23, 2002, and provided opportunity for public comment on the proposed remedial action.

8. The decision by EPA on the remedial action to be implemented for lead contaminated soils at operable units 00 through 03 of the Site is embodied in a final Record of Decision ("ROD"), executed on September 30, 2001, on which the State has given its concurrence. The ROD is attached to this Order as Attachment 1 and is incorporated by reference. The ROD is supported by an administrative record that contains the documents and information upon which EPA based the selection of the response action.

9. Lead and arsenic have been identified as the primary contaminants of concern at the Site. Lead and arsenic are "hazardous substances," as defined by Section 101(14) of CERCLA.

10. EPA and the State conducted site assessment and sampling activities at the Site which led to the identification of two main source areas at the Site: (1) residential properties, including a commercial business zone; and (2) non-residential properties, including mine waste piles and undeveloped areas. Samples collected by EPA showed the presence of lead and, to a lesser extent, arsenic in surface soils throughout the residential neighborhoods of Eureka. Of 547 properties sampled, only 11 properties contain lead concentrations below 231 ppm. The maximum lead concentration detected in surface soils is 18,000 ppm. Lead concentrations within the waste pile material ranges up to 69,000 ppm, while lead in the potential development areas ranges up to 27,000 ppm.

11. EPA has evaluated risks from lead exposure by estimating the blood lead levels in exposed individuals and comparing those estimates to health-based guidelines. In a residential setting, the group most at risk for exposure to lead is children under the age of 7 years. EPA recommends that there should be no more than a 5% chance of a child having a blood-lead value higher than 10 $\mu\text{g}/\text{dL}$. In its Baseline Human Health Risk Assessment, EPA used a model that predicted that the chance was between 69 and 100% for a child under the age of 7 years in Eureka having a blood lead level higher than 10 $\mu\text{g}/\text{dL}$. This was based on the lead levels in the soils at most residences in Eureka as well as behaviors identified in a survey completed at the same time as the blood lead testing.

12. In an Action Memorandum dated May 29, 2001, EPA authorized a CERCLA Time-Critical Removal Action. In the Action Memorandum, EPA made the determination that an actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to public health or welfare or the environment. The Removal Action,

which was conducted in 2001 and 2002, involved the excavation and disposal of lead-contaminated soils at 71 residential properties at the Site. The properties that were cleaned up met one or more of the following criteria: (1) residential lots with lead contamination greater than 3,000 ppm where families are residing; (2) residential lots where children live whose blood lead level is greater than 10 $\mu\text{gPb/dL}$; or (3) residential lots which are contiguous with lots under criterion #1, where lead concentrations were above 500 ppm and where it made economic sense to include the property in the cleanup.

13. EPA issued two Records of Decision (RODs) for the Site on September 30, 2002. The Early Interim Action ROD identifies actions to be implemented to protect public health in the short term, while a long-term cleanup solution to address lead-contaminated soils is being simultaneously implemented in the Lead-Contaminated Soils ROD. A portion of the Lead Contaminated Soils ROD will be implemented through this Order. The remedy selected in the Early Interim Action ROD includes the following components: (1) a voluntary quarterly blood testing program for children at risk; (2) educational outreach programs; and (3) a voluntary program for in-home soil and dust sampling. The Lead-Contaminated Soils ROD describes the remedial action selected by EPA for the long-term cleanup of the Site. The remedial action involves four components: (1) continued cleanup of lead-contaminated soils in residential yards, including the placement of protective covers; (2) cleanup of mine waste piles and other non-residential areas, including the placement of protective covers; (3) public health actions; and (4) institutional controls.

III. CONCLUSIONS OF LAW AND DETERMINATIONS

14. The Eureka Mills NPL Site is a "facility" as defined in section 101(9) of CERCLA, 42 U.S.C. 9601(9).

15. Respondent is a "person" as defined in section 101(21) of CERCLA, 42 U.S.C. 9601(2).

16. Respondent is a "liable party" as defined in section 107(a) of CERCLA, 42 U.S.C. 9607(a), and is subject to this Order under section 106(a) of CERCLA, 42 U.S.C. 9606(a).

17. The substances listed in paragraph 9 are found at the Site and are "hazardous substances" as defined in section 101(14) of CERCLA, 42 U.S.C. 9601(14).

18. These hazardous substances have been, are being, and threaten to be released from the Site into the soil, surface water and air.

19. The past and present disposal and migration of hazardous substances from the Site are a "release" as defined in section 101(22) of CERCLA, 42 U.S.C. 9601(22).

20. The potential for future migration of hazardous substances from the Site poses a threat of a "release" as defined in section 101(22) of CERCLA, 42 U.S.C. 9601(22).

21. The release of one or more hazardous substances from the facility may present an imminent and substantial endangerment to the public health or welfare or the environment.

22. The contamination and endangerment at this Site constitute an indivisible injury. The actions required by this Order are necessary to protect the public health and welfare as well as the environment.

IV. NOTICE TO THE STATE

23. Prior to issuing this Order, EPA notified the State that EPA would be issuing this Order.

V. ORDER

24. Based on the foregoing, Respondent is hereby ordered to comply with the following provisions including, but not limited to, all attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order:

VI. DEFINITIONS

25. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or its implementing regulations. Whenever terms listed below are used in this Order or in the documents attached to this Order or incorporated by reference into this Order, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.

b. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the end of the next working day.

c. "EPA" shall mean the United States Environmental Protection Agency.

d. "National Contingency Plan" or "NCP" shall mean the National Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

e. "Operation and Maintenance" or "O&M" shall mean all activities required under the Operation and Maintenance Plan to be implemented by Respondent pursuant to this Order and Volume V of the Remedial Action Work Plan.

f. "Paragraph" shall mean a portion of this Order identified by an arabic numeral.

g. "Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations, identified in the ROD, the Remedial Design, and the Remedial Action Work Plan, that the Remedial Action and O&M required by this Order must attain and maintain.

h. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Lead Contaminated Soils for Operable Units 00 through 03 of the Eureka Mills NPL Site, signed on September 30, 2001, and all attachments thereto.

i. "Remedial Action" or "RA" shall mean those activities, except for Operation and Maintenance, to be undertaken by Respondent to implement the EPA Remedial Action Work Plan for OUs 00, 01, and 03, including any additional activities required under Sections X, XI, XII, XIII, and XIV of this Order.

j. "Remedial Action Work Plan" or "RAWP" shall mean the work plan for implementation of the Remedial Action, Operation and Maintenance and Institutional Controls for operable units 00, 01, 02 and 03 at the Site. The RAWP is attached as Attachment 2 to this Order. The RAWP is incorporated into this Order and is an enforceable part of this Order. Respondent is responsible for implementing the RAWP as it relates to OUs 00, 01 and 03. EPA will implement the RAWP as it relates to OU 02 (Volume 2 of the RAWP). Respondent will be required to coordinate its work with EPA's work.

k. "Response Costs" shall mean all costs, including direct costs, indirect costs, and accrued interest incurred by the United States and the State to perform or support response actions at the Site. Response costs include but are not limited to the costs of overseeing the Work, such as the costs of reviewing or developing plans, reports and other items pursuant to this Order, costs for field oversight of the Work and costs associated with verifying the Work.

l. "Section" shall mean a portion of this Order identified by a roman numeral and includes one or more paragraphs.

m. "Site" shall mean the Eureka Mills NPL site, encompassing approximately 700 acres, located in and around the town of Eureka, in Juab and Utah Counties, State of Utah, as described in the Record of Decision.

n. "State" shall mean the Utah Department of Environmental Quality.

o. "United States" shall mean the United States of America.

p. "Work" shall mean all activities Respondent is required to perform under this Order to implement the ROD for Operable Units 00, 01 and 03, including Remedial Action, Operation and Maintenance, and any activities required to be undertaken pursuant to Sections VII through XXIV, and XXVII of this Order.

VII. NOTICE OF INTENT TO COMPLY

26. Respondent shall provide, not later than twenty-one (21) days after the effective date of this Order, written notice to EPA's Remedial Project Manager (RPM) stating whether it will comply with the terms of this Order. If Respondent does not unequivocally commit to perform the RA as provided by this Order, it shall be deemed to have violated this Order and to have failed or refused to comply with this Order. Respondent's written notice shall describe, using facts that exist on or prior to the effective date of this Order, any "sufficient cause" defenses asserted by Respondent under sections 106(b) and 107(c)(3) of CERCLA. The absence of a response by EPA to the notice required by this paragraph shall not be deemed to be acceptance of Respondent's assertions.

VIII. PARTIES BOUND

27. This Order shall apply to and be binding upon the Respondent, its directors, officers, employees, agents, successors, and assigns. No change in the ownership, corporate status, or other control of the Respondent shall alter any of the Respondent's responsibilities under this Order.

28. Respondent shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondent's assets, property rights, or stock are transferred to the prospective owner or successor. Respondent shall provide a copy of this Order to each contractor, sub-contractor, laboratory, or consultant retained to perform any Work under this Order, within twenty-one (21) days after the effective date of this Order or on the date such services are retained, whichever date occurs later. Respondent shall also provide a copy of this Order to each person representing Respondent with respect to the Site or the Work and shall condition all contracts and subcontracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. With regard to the activities undertaken pursuant to this Order, each contractor and subcontractor shall be deemed to be related by contract to the Respondent within the meaning of section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). Notwithstanding the terms of any contract, Respondent is responsible for compliance with this Order and for ensuring that its contractors, subcontractors and agents comply with this Order, and perform any Work in accordance with this Order.

IX. WORK TO BE PERFORMED

29. Respondent shall cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Respondent shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

30. All aspects of the Work to be performed by Respondent pursuant to this Order shall be under the direction and supervision of a qualified project manager the selection of which shall be subject to approval by EPA, in consultation with the State. Within twenty-one (21) days after the effective date of this Order, Respondent shall notify EPA and the State in writing of the name and qualifications of Respondent's project manager, including primary support entities and staff, proposed to be used in carrying out work under this Order. If at any time Respondent proposes to use a different project manager, Respondent shall notify EPA and the State and shall obtain approval from EPA before the new project manager performs any work under this Order.

31. EPA, in consultation with the State, will review Respondent's selection of a project manager according to the terms of this paragraph and Section XIV of this Order. If EPA disapproves of the selection of the project manager, Respondent shall submit to EPA and the State within seven (7) days after receipt of EPA's disapproval of the project manager previously selected, a list of project managers, including primary support entities and staff, that would be acceptable to Respondent. EPA will thereafter provide written notice to Respondent of the names of the project managers that are acceptable to EPA. Respondent may then select any approved project manager from that list and shall notify EPA and the State of the name of the project manager selected within ten (10) days of EPA's designation of approved project managers.

32. Within ten (10) days after Respondent selects an approved project manager, Respondent shall identify the initial formulation of Respondent's Remedial Action Project Team including its primary contractor. Respondent shall submit to EPA and the State for review a Health and Safety Plan for field activities required by the RAWP within forty-five (45) days of the effective date of the Order. The Health and Safety Plan for field activities shall conform to applicable Occupational Safety and Health Administration and EPA requirements, including but not limited to the regulations at 54 Fed. Reg. 9294. The Respondent's Health and Safety Plan shall at a minimum be consistent with EPA's Health and Safety Plan in the RAWP.

33. The Respondent shall submit specific submittals as listed in Appendices O & P of the Quality Control Plan, Volume IV in the RAWP, according to the schedules in the RAWP. These submittals include but are not limited to a laboratory quality assurance project plan for the laboratory that the Respondent intends to use as well as other information and procedures concerning analysis of soils and mine waste materials.

34. Respondent shall implement the RAWP, except for Volume 2, according to the schedules in the RAWP. Unless otherwise directed by EPA, Respondent shall not commence remedial action at the Site prior to the scheduled commencement date. Respondent shall not proceed with any

portion of the Work at the Site until all required deliverables (plans or supplements to the RAWP) due prior to commencement of the Work have been submitted to EPA and the State and approved by EPA per the Schedule of Submittals and Compliance in UAO attached to the Order as Attachment 3 or the schedule provided in the RAWP.

35. If Respondent seeks to retain a construction contractor to assist in the performance of the Remedial Action, then Respondent shall submit a copy of the contractor solicitation documents to EPA and the State not later than five (5) days after publishing the solicitation documents.

36. Not later than fifteen (15) days prior to start of construction or the contractor's start date, Respondent shall notify EPA and the State in writing of the name, title, and qualifications of the primary construction contractor proposed to be used in carrying out work under this Order. The Respondent shall also notify EPA and the State in writing of the name, title, and qualifications of any subcontractors at the same time or at least fifteen (15) days prior to when the subcontractor is scheduled to enter the Site to perform work. EPA, in consultation with the State, shall thereafter provide written notice of the name(s) of the contractor(s) it approves, if any. Respondent may select any approved contractor from that list and shall notify EPA and the State of the name of the contractor selected within seven (7) days of EPA's designation of approved contractors. If at any time Respondent proposes to change the construction contractor, Respondent shall notify EPA and the State and shall obtain approval from EPA as provided in this paragraph, before the new construction contractor performs any work under this Order. If EPA disapproves of the selection of any contractor as the construction contractor, Respondent shall submit a list of contractors that would be acceptable to it to EPA and the State within thirty (30) days after receipt of EPA's disapproval of the contractor previously selected.

37. Notwithstanding any action by EPA, Respondent remains fully responsible for achievement of the Performance Standards in the Record of Decision and RAWP for OUs 00, 01 and 03. Nothing in this Order, or in the RAWP, or in EPA's approval of any other submission, shall be deemed to constitute a warranty or representation of any kind by EPA or the State that full performance of the Remedial Action will achieve the Performance Standards set forth in the ROD and in the RAWP. Respondent's compliance with such approved documents does not foreclose EPA or the State from seeking additional work to achieve the applicable Performance Standards.

38. Respondent shall, prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's RPM and the State of such shipment of hazardous substances.

a. The notification shall be in writing, and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be

shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. Respondent shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for Remedial Action construction. Respondent shall provide all relevant information, including information under the categories noted in paragraph 38.a above, on the off-Site shipments as soon as practicable after the award of the contract and before the hazardous substances are actually shipped.

39. Within thirty (30) days after Respondent concludes that the Remedial Action has been fully performed, Respondent shall so notify EPA and the State and shall schedule and conduct a pre-final inspection to be attended by Respondent, EPA and the State. The pre-final inspection shall be followed by a written report submitted within thirty (30) days of the inspection by a registered professional engineer and Respondent's project manager certifying that the Remedial Action has been completed in full satisfaction of the requirements of this Order. The Respondent may request that a pre-final inspection be conducted at the end of each construction season for that portion of the Remedial Action that is fully completed during that construction season. If, after completion of the pre-final inspection and receipt and review of the written report, EPA, in consultation with the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Order, EPA shall notify Respondent in writing of the activities that must be undertaken to complete the Remedial Action and shall set forth in the notice a schedule for performance of such activities. Respondent shall perform all activities described in the notice in accordance with the specifications and schedules established therein. If EPA, in consultation with the State, concludes, following the initial or any subsequent certification of completion by Respondent that the Remedial Action has been fully performed in accordance with this Order, EPA may notify Respondent that the Remedial Action has been fully performed. EPA's notification shall be based on present knowledge and Respondent's certification to EPA, and shall not limit EPA's right to perform periodic reviews pursuant to section 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any action that in the judgment of EPA is appropriate at the Site, in accordance with sections 104, 106 or 107 of CERCLA, 42 U.S.C. §§ 9604, 9606, or 9607.

40. Within thirty (30) days after Respondent concludes that all phases of the Work have been fully performed, that the Performance Standards have been attained, and that all Operation and Maintenance activities have been completed, Respondent shall submit to EPA and the State a written report by a registered professional engineer certifying that the Work has been completed in full satisfaction of the requirements of this Order. EPA shall require such additional activities as may be necessary to complete the Work or EPA may, in consultation with the State and based upon present knowledge and Respondent's certification to EPA, issue written notification to

Respondent that the Work has been completed, as appropriate, in accordance with the procedures set forth in Paragraph 39 for Respondent's certification of completion of the Remedial Action. EPA's notification shall not limit EPA's right to perform periodic reviews pursuant to section 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any action that in the judgment of EPA is appropriate at the Site, in accordance with 42 U.S.C. §§ 9604, 9606, or 9607.

X. FAILURE TO ATTAIN PERFORMANCE STANDARDS

41. In the event that EPA, in consultation with the State, determines that additional response activities are necessary to meet applicable Performance Standards, EPA may notify Respondent that additional response activities are necessary.

42. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice from EPA that additional response activities are necessary to meet any applicable Performance Standards, Respondent shall submit to EPA and the State a work plan or supplement to the existing Remedial Action Work Plan for the additional response activities. The plan shall conform to the applicable requirements of sections IX, XVI, and XVII of this Order. EPA will consult with the State in its review of the plan. Upon EPA's approval of the plan pursuant to Section XIV, Respondent shall implement the plan for additional response activities in accordance with the provisions and schedule contained therein.

XI. EPA AND STATE PERIODIC REVIEW

43. Under section 121(c) of CERCLA, 42 U.S.C. 9621(c), and any applicable regulations, EPA and the State may review the Site to assure that the Work performed pursuant to this Order adequately protects human health and the environment. Until such time as EPA certifies completion of the Work, Respondent shall conduct the requisite studies, investigations, or other response actions as determined necessary by EPA in order to permit EPA to conduct the review under section 121(c) of CERCLA. As a result of any review performed under this paragraph, Respondent may be required to perform additional work or to modify work previously performed.

XII. ADDITIONAL RESPONSE ACTIONS

44. EPA may determine that in addition to the work identified in this Order and attachments to this Order, additional response activities may be necessary to protect human health and the environment. If EPA, in consultation with the State, determines that additional response activities are necessary, EPA may require Respondent to submit to EPA and the State a work plan or supplement to the existing Remedial Action Work Plan for additional response activities.

EPA may also require Respondent to modify any plan, design, or other deliverable required by this Order, including any approved modifications.

45. Not later than thirty (30) days after receiving EPA's notice that additional response activities are required pursuant to this Section, Respondent shall submit a work plan or supplement to the existing Remedial Action Work Plan for the response activities to EPA and the State. Upon approval by EPA, the work plan is incorporated into this Order as a requirement of this Order and shall be an enforceable part of this Order. Upon approval of the work plan by EPA, Respondent shall implement the Work according to the standards, specifications, and schedule in the approved Remedial Action Work Plan or amended Remedial Action Work Plan as appropriate. Respondent shall notify EPA and the State of its intent to perform such additional response activities within seven (7) days after receipt of EPA's request for additional response activities.

XIII. ENDANGERMENT AND EMERGENCY RESPONSE

46. In the event of any action or occurrence during the performance of the Work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize the threat, and shall immediately notify EPA's RPM or, if the RPM is unavailable, EPA's Alternate RPM and the State. If neither EPA's RPM or EPA's Alternate RPM is available, Respondent shall notify the EPA Emergency Response Branch, Region 8. Respondent shall take such action in consultation with EPA's RPM and in accordance with all applicable provisions of this Order, including but not limited to the Health and Safety Plan and the Contingency Plan. In the event that Respondent fails to take appropriate response action as required by this Section, EPA may take that action instead and seek reimbursement from Respondent for all costs of the response action not inconsistent with the NCP.

47. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substance on, at, or from the Site.

XIV. EPA AND STATE REVIEW OF SUBMISSIONS

48. After review of any deliverable, plan, report or other item which is required to be submitted for review and approval pursuant to this Order, EPA, in consultation with the State, may: (a) approve the submission; (b) approve the submission with modifications; (c) disapprove the submission and direct Respondent to re-submit the document after incorporating EPA's and the State's comments; or (d) disapprove the submission and assume responsibility for performing all

or any part of the response action. As used in this Order, the terms "approval by EPA," "EPA approval," or a similar term means the action described in provision (a) or (b) of this paragraph.

49. In the event of approval or approval with modifications by EPA, Respondent shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA.

50. Upon receipt of a notice of disapproval or a request for a modification, Respondent shall, within ten (10) days or such longer time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval, or approval with modifications, Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

51. If any submission is not approved by EPA, Respondent shall be deemed to be in violation of this Order.

XV. PROGRESS REPORTS

52. In addition to the other deliverables set forth in this Order, Respondent shall provide bi-weekly progress reports to EPA and the State with respect to actions and activities undertaken pursuant to this Order. The progress reports shall be submitted by close of business on the second and fourth Fridays of each month following Respondent's notice of intent to comply with this Order, pursuant to paragraph 26. Respondent's obligation to submit progress reports continues until EPA gives Respondent written notice under paragraph 40. At a minimum these progress reports shall: (1) describe the actions which have been taken to comply with this Order during the prior two week period; (2) include all results of sampling and tests and all other data received by Respondent and not previously submitted to EPA; (3) describe all work planned within the next month with schedules relating such work to the overall project schedule for RA completion; and (4) describe all problems encountered and any anticipated problems, and actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays. To the extent practicable, the Respondent may submit its bi-weekly progress reports via electronic mail. In addition, the Respondent shall participate in meetings with EPA, EPA's on-site representative and the State as specified in Section 2.7 of the RAWP to ensure that the work proceeds on schedule. During winter months, at the EPA RPM's discretion, the frequency of progress reports and meetings may be reduced.

XVI. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

53. Respondent shall use the quality assurance, quality control, and chain of custody procedures described in the following EPA documents and any amendments to these documents, while conducting all sample collection and analysis activities required herein by any plan.

- “EPA Requirements for QA Project Plans,” (QA/R-5), EPA/240/B-01/003, March, 2001.
- “Guidance for Developing Quality Systems for Environmental Programs,” (G-4), EPA/240/R-02/008, November, 2002.
- “Guidance for the Data Quality Objectives Process,” (G-4), EPA/600/R-96/055, August, 2000.
- “Guidance for the Data Quality Objectives Process for Hazardous Wastes Sites,” (G-4HW), EPA/600/R-00/007, January, 2000.
- “Guidance on Quality Assurance Project Plans,” (G-5), EPA/600/R-02/009, December, 2002.
- “Guidance on Geospatial Data Quality Assurance Project Plans,” (QA/G-5G), EPA/240/R-03/003, March, 2003.
- “Guidance on Choosing a Sampling Design for Environmental Data Collection,” (G-5S), EPA/600/R-02/005, December, 2002.
- “Guidance for Preparing Standard Operating Procedures,” (G-6), EPA/240/B-01/004, March, 2001.
- “Guidance on Environmental Data Verification and Validation,” (G-8), EPA/240/R-02/004, November, 2002.

The Respondent is referred to the following websites for copies of these guidance: <<http://www.epa.gov/quality1/qa_docs.html>> To provide quality assurance and maintain quality control, Respondent shall:

a. Use only laboratories which have a documented Quality Assurance Program that complies with EPA guidance and requirements for the CLP Program or equivalent. Information on the CLP laboratory requirements can be found on the following website:

<< <http://www.epa.gov/oerrpage/superfund/programs/clp/> >>

b. Ensure that the laboratory used by the Respondent for analyses, performs according to a method or methods deemed satisfactory to EPA and submits all protocols to be used for analyses to EPA at least twenty-one (21) days before beginning sample collection. Pursuant to paragraph 33 of this Order, the Respondent shall submit a laboratory quality assurance project plan according to the submittal schedule in the RAWP.

c. Ensure that EPA and State personnel and their authorized representatives are allowed access to the laboratory and personnel utilized by the Respondent for analysis.

54. Respondent shall notify EPA and the State not less than fourteen (14) days in advance of any sample collection activity. At the request of EPA or the State, Respondent shall allow split or duplicate samples to be taken by EPA, the State or their authorized representatives, of any samples collected by Respondent with regard to the Site or pursuant to the implementation of

this Order. In addition, EPA and the State shall have the right to take any additional samples that EPA and the State deem necessary.

XVII. COMPLIANCE WITH APPLICABLE LAWS

55. All activities by Respondent pursuant to this Order shall be performed in accordance with the requirements of all Federal and state laws and regulations. EPA has determined that the activities contemplated by this Order are not inconsistent with the National Contingency Plan (NCP).

56. Except as provided in section 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site. Where any portion of the Work requires a Federal or state permit or approval, Respondent shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

57. This Order is not, and shall not be construed to be, a permit issued pursuant to any Federal or state statute or regulation.

58. All hazardous substances removed off-site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance with section 121(d)(3) of CERCLA, and the "Revised Procedures for Implementing Off-Site Response Actions," OSWER Directive Number 9834.11, November 13, 1987, as determined by EPA, in consultation with the State.

XVIII. MODIFICATIONS

59. Modifications to any plan or schedule may be made by EPA's RPM or his/her designated representative in writing or by verbal direction. If the EPA RPM or his/her designated representative makes an oral modification, it will be memorialized in writing within seven (7) days; provided, however, that the effective date of the modification shall be the date of the EPA RPM's or his/her designated representative's oral direction. Any other requirements of the Order may be modified in writing by the Director of the Superfund Remedial Response Program, Office of Ecosystems Protection and Remediation, EPA Region 8.

60. If Respondent seeks approval to deviate from the Remedial Action Work Plan or schedule, Respondent's project manager shall submit a written request for approval to EPA, with a copy to the State, outlining the proposed Remedial Action Work Plan modification and its basis.

61. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve the Respondent of its obligation to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XIX. REMEDIAL PROJECT MANAGER

62. All communications, whether written or oral, from Respondent to EPA and the State shall be directed to EPA's RPM and the State Project Manager. Respondent shall submit to EPA's RPM and the State Project Manager two copies of all documents, including plans, reports, and other correspondence, which are developed pursuant to this Order, and shall send these documents by overnight mail. An additional copy of all documents shall be sent to EPA's on-site representative at the address listed in Paragraph 88 below. Copies of reports and plans may be submitted electronically upon agreement of EPA's RPM.

63. EPA has the right to change its RPM. If EPA changes its RPM, EPA will inform Respondent in writing of the name, address, and telephone number of the new RPM.

64. EPA's RPM shall have the authority lawfully vested in an RPM and On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. EPA's RPM shall have authority, consistent with the National Contingency Plan, to halt any work required by this Order, and to take any necessary response action.

XX. ACCESS TO SITE NOT OWNED BY RESPONDENT

65. If the Site, the off-Site area that is to be used for access, property where documents required to be prepared or maintained by this Order are located, or other property subject to or affected by the clean up, is owned in whole or in part by parties other than those bound by this Order, Respondent will obtain, or use its best efforts to obtain, site access agreements from the present owner(s) 30 days prior to the date access is needed. Such agreements shall provide access for EPA, its contractors and oversight officials, the State and its contractors, and Respondent or Respondent's authorized representatives and contractors, and such agreements shall specify that Respondent is not EPA's or the State's representative with respect to liability associated with Site activities. Copies of such agreements shall be provided to EPA prior to Respondent's initiation of field activities. Respondent's best efforts shall include providing reasonable compensation to any off-Site property owner. If access agreements are not obtained within the time referenced above, Respondent shall immediately notify EPA of its failure to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for the Respondent, may perform those response actions with EPA contractors at the property in question, or may terminate the Order if Respondent cannot obtain access agreements. If EPA performs those tasks or activities with contractors and does not terminate the Order, Respondent shall perform all other activities not requiring access to that property. Respondent shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

XXI. DATA/DOCUMENT AVAILABILITY

66. Respondent may assert a claim of business confidentiality covering part or all of the information submitted to EPA or the State pursuant to the terms of this Order under 40 C.F.R. 2.203, provided such claim is not inconsistent with section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), or other provisions of law. This claim shall be asserted in the manner described by 40 C.F.R. 2.203(b) and substantiated by Respondent at the time the claim is made. Information determined to be confidential by EPA will be given to protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA or the State, it may be made available to the public by EPA or the State without further notice to the Respondent. Respondent shall not assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring.

67. Respondent shall maintain for the period during which this Order is in effect, an index of documents that Respondent claims contain confidential business information. The index shall contain, for each document, the date, author, addressee, and subject of the document. Upon written request from EPA or the State, Respondent shall submit a copy of the index to EPA or the State.

XXII. RECORD PRESERVATION

68. Respondent shall provide to EPA upon request, copies of all documents and information within its possession and/or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Order, including but not limited to sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

69. Until ten (10) years after EPA provides notice pursuant to paragraph 40, the Respondent shall preserve and retain all records and documents in its possession or control, including the documents in the possession or control of its contractors and agents on and after the effective date of this Order that relate in any manner to the Site and the performance of the Work. At the conclusion of this document retention period, Respondent shall notify EPA and the State at least ninety (90) calendar days prior to the destruction of any such records or documents, and upon request by EPA, Respondent shall deliver any such records or documents to EPA.

70. Within 30 days after the effective date of this Order, Respondent shall submit a written certification to EPA's RPM that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability with regard to the Site since notification of potential liability by EPA or the State or the filing of suit against it regarding the Site. Respondent shall not dispose of any such documents without prior

approval by EPA. Respondent shall, upon EPA's request and at no cost to EPA, deliver the documents or copies of the documents to EPA.

XXIII. DELAY IN PERFORMANCE

71. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondent under the terms of this paragraph shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondent's obligations to fully perform all obligations under the terms and conditions of this Order.

72. Respondent shall notify EPA and the State of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's RPM and the State within forty eight (48) hours after Respondent first knew or should have known that a delay might occur. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within five (5) business days after notifying EPA and the State by telephone, Respondent shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

XXIV. ASSURANCE OF ABILITY TO COMPLETE WORK

73. Respondent shall demonstrate its ability to complete the Work required by this Order and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA within thirty (30) days of the effective date of this Order, one of the following: (1) a performance bond; (2) a letter of credit; (3) a guarantee by a third party together with sufficient financial information to allow EPA to determine that the third party has sufficient assets available to perform the Work; or (4) internal financial information to allow EPA to determine that Respondent has sufficient assets available to perform the Work. Respondent shall demonstrate financial assurance in an amount no less than the estimate of the cost for the Remedial Action contained in the Record of Decision. If Respondent seeks to demonstrate ability to complete the Remedial Action by means of internal financial information, or by guarantee of a third party, it shall re-submit such information annually, on the anniversary of the effective date of this Order. If EPA determines that such financial information is inadequate, Respondent shall, within thirty (30) days after receipt of EPA's notice of determination, obtain and present to EPA for approval one of the other three forms of financial assurance listed above.

74. At least seven (7) days prior to commencing any work at the Site pursuant to this Order, Respondent shall submit to EPA a certification that Respondent or its contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for

injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondent pursuant to this Order. Respondent shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order.

XXV. EPA NOT LIABLE

75. EPA, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondent or its directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither EPA nor the United States may be deemed to be a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Respondent shall save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action or other costs incurred by the United States including but not limited to attorneys fees and other expenses of litigation and settlement arising from or on account of acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order, including any claims arising from any designation of Respondent as EPA's authorized representative under section 104(e) of CERCLA.

XXVI. ENFORCEMENT AND RESERVATIONS

76. EPA reserves the right to bring an action against Respondent under section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order and not reimbursed by Respondent. This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight cost demand, as well as accrued interest as provided in section 107(a) of CERCLA.

77. Notwithstanding any other provision of this Order, at any time during the response action, EPA may perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the NCP, and seek reimbursement from Respondent for its costs, or seek any other appropriate relief.

78. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. § 9606(a), et seq., or any other applicable law. Respondent shall be liable under CERCLA section 107(a), 42 U.S.C. § 9607(a), for the costs of any such additional actions.

79. Notwithstanding any provision of this Order, EPA hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA and any other applicable statutes or regulations.

80. Respondent shall be subject to civil penalties under section 106(b) of CERCLA, 42 U.S.C. § 9606(b), of not more than \$27,500 for each day in which Respondent willfully violates, or fails or refuses to comply with this Order without sufficient cause. In addition, failure to properly provide response action under this Order, or any portion hereof, without sufficient cause, may result in liability under section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for punitive damages in an amount at least equal to, and not more than three times the amount of any costs incurred by the Fund as a result of such failure to take proper action.

81. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person for any liability it may have arising out of or relating in any way to the Site.

82. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XXVII. ADMINISTRATIVE RECORD

83. Upon request by EPA, Respondent must submit to EPA all documents related to the selection of the response action for possible inclusion in the administrative record file.

XXVIII. EFFECTIVE DATE AND COMPUTATION OF TIME

84. This Order shall be effective on May 30, 2003. All times for performance of ordered activities shall be calculated from this effective date.

XXIX. OPPORTUNITY TO CONFER

85. Respondent may, within ten (10) days after the date this Order is signed, request a conference with EPA's Superfund Remedial Response Program Director to discuss this Order. If requested, the conference shall occur within 14 days of the effective date of this Order at EPA's Region 8 office, located at 999 18th Street in Denver, Colorado.

86. The purpose and scope of the conference shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which Respondent intends to comply with this Order. This conference is not an evidentiary hearing,

and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondent's request, Respondent may appear in person or by an attorney or other representative.

87. Requests for a conference must be by telephone followed by written confirmation mailed that day to Paula Schmitt diel, RPM, US EPA, 999 18th Street, Suite 300, Denver, CO 80202, (303) 312-6861.

XXX. NOTICE

88. Whenever written notice is required to be given or a report or other document is required to be sent to EPA, the State or Respondent pursuant to this Order, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the others in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Order with respect to EPA, the State and the Respondent, respectively.

As to EPA:

Paula Schmitt diel
EPA RPM
United States Environmental Protection Agency
999 18th Street, Suite 300
Denver, CO 80202-2466
Phone: 303-312-6861
e-mail: schmitt diel.paula@epa.gov

Jude Hobza, PE (EPA's On-site Representative)
United States Army Corps of Engineers - Rapid Response
P.O. Box 13287
Building 525 Castle Hall
Offutt AFB, NE 68113
Phone: 420-293-2530
e-mail: jude.t.hobza@usace.army.mil>

For all documents related to Paragraphs 73 and 74:
Daniela Golden

EPA Financial Analyst
United States Environmental Protection Agency
999 18th Street, Suite 300
Denver, CO 80202-2466
e:mail: golden.daniela@epa.gov

As to the State:

David Bird
State Project Manager
Utah Department of Environmental Quality
Division of Environmental Response and Remediation
168 North 1950 West
Salt Lake City, Utah 84116
or
P.O. Box 144840
Salt Lake City, UT 84114-4840
Phone: 801-536-4219
e-mail: dgbird@utah.gov

As to the Respondent:

Respondent's Project Manager

So Ordered, this 27th day of May, 2003.

By: **SIGNED** _____
Dale Vodehnal, Director
Superfund Remedial Response Program
Office of Ecosystems Protection and Remediation
U.S. Environmental Protection Agency, Region 8

SCHEDULE OF SUBMITTALS & COMPLIANCE IN UAO

NLT = Not Later Than
 EDO = Effective Date of Order (calendar days)
 (#) = Number of Paragraph in Order

PM = Project Manager
 W/ = Within
 UAO takes effect Friday, May 30, 2003

- | | | | |
|-----|--|---|------|
| 1. | Notice of Intent to Comply | NLT 21 days after EDO | (26) |
| 2. | Provide Copy of Order to Contractors | W/ 21 days after EDO or
on date services retained | (28) |
| 3. | Name Project Manager & Key Support Staff | W/ 21 days after EDO | (30) |
| 4. | List of alternate PM if 1 st choice is unacceptable | W/ 7 days after EPA
disapproval | (31) |
| 5. | Notify EPA of selected alt. PM | W/ 10 days after EPA
approves list | (31) |
| 6. | Identify RA Project Team (Prime Contractor) | W/ 10 days after selection
of PM | (32) |
| 7. | Submit H/S Plan for review | W/ 45 days after EDO | (32) |
| 8. | Submittal of specific sections for incorporation
into Remedial Action Work Plan | Per Appendices O & P of
Quality Control Plan, Vol. IV | (33) |
| 9. | Retention of contractor - submit copy of
solicitation documents | NLT 5 days after publishing
solicitation documents | (35) |
| 10. | Provide name, qualifications of any construction
contractor to EPA for approval | NLT 15 days prior to start
of construction or start
date. | (36) |
| 11. | Select approved contractor | W/ 7 days of EPA
approval of contractor list | (36) |
| 12. | Schedule of pre-final inspection | W/ 30 days of completion
of RA | (39) |
| 13. | Written Report certifying completion of Work | W/ 30 days of Respondent | (40) |

	(Performance standards attained, all O&M completed	concludes that Work is complete.	
14.	Submit work plan or supplement to existing work plan for additional response activities	W/ 30 days of receipt of EPA's notice	(42 & 45)
15.	Correction of deficiencies, resubmit plan, report	W/ 10 days of EPA's disapproval of submittal	(50)
16.	Submittal of Progress Reports	2 nd & 4 th Friday of each month after receipt of notice of intent to comply w/Order	(52)
17.	Submit analytical protocols prior to sample collection for EPA review	At least 21 days prior to sample collection	(53 b)
18.	Notify EPA of planned sample activity	At least 14 days prior to sampling	(54)
19.	Obtain access from property owners	NLT 30 days prior to date access is needed	(65)
20.			Notify EPA of intent to destroy documents At least 90 days prior to (69)
		date of destruction	
21.	Written certification of non-destruction of records or documents pertaining to its liability	W/ 30 days of EDO	(70)
22.	Notification of delays in performing	W/ 48 hrs by phone, w/in	(72)

	any requirement of Order	5 days written notification	
23.	Demonstrate ability to perform Work	W/ 30 days EDO	(73)
24.	Provide alt. financial assurance	W/ 30 days of EPA disapproval of 1 st financial	(73)
25.	Submittal of adequate insurance coverage by (sub) contractors	At least 7 days prior to beginning work @ Site	(74)
26.	Effective date of Order	May 30, 2003	(84)
27.	Request for conference after receipt of Order	W/ 10 days of signature of of Order	(85)

**IF YOU WOULD LIKE COPIES OF THE RECORD OF DECISION, PLEASE
CONTACT THE REGIONAL HEARING CLERK.**

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON MAY 28, 2003.

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